IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.6991 OF 2005
IN
CRIMINAL APPEAL NO.797 of 2005

Ramesh @ Ravi Anant Vichare. ..Applicant.

V/s.

The State of Maharashtra & Anr. ..Respondents.

Mr.Rajiv Patil with K.S.Patil for applicant.

Mrs. M.H.Mhatre APP, for State.

CORAM: A.M.KHANWILKAR,J

DATE : NOVEMBER 18, 2005.

P.C. :

1. Heard counsel for the parties. The applicant has been named as accused No.3 in the offence registered with the Kherwadi Police Station in C.R.No.71 of 1989. The applicant was tried as accused alongwith the other accused in Sessions Case No.899 of 2002 and has been convicted for offence punishable under section 307 read with 34 Indian Penal Code and to suffer rigorous imprisonment for seven years and to pay fine of Rs.5,000/-(Rupees five thousand only) in default, to further R.I. of one month. The applicant has carried the said order of conviction and sentence passed by the Additional Sessions Judge, Greater Bombay dated 6th August, 2005

in appeal before this court in Criminal Appeal No.797 of 2005. The appeal has been admitted on 29th August, 2005.

2. The applicant had preferred an application for bail during the pendency of the appeal being Criminal Application No.5526 of 2005. This court after considering the matter at length has granted bail to the applicant as also to other accused for the reasons recorded in its order dated 9th September, 2005. The court has prima facie observed that the prosecution case suffers from different infirmities which are fatal.

3. What is relevant for our purpose is that after the order of conviction and sentence passed by the trial court, applicant was taken into custody and had to undergo imprisonment. On account of that, applicant was unable to attend his office and therefore, has been marked absent. Indeed, this court has released the applicant on bail on 9th September, 2005. But when the applicant resumed his duty, he has been served with show-cause notice dated 29/30th September, 2005 calling upon him to show cause as to why he remained absent from 6th August, 2005. On receipt of this notice, the applicant has

now approached this court by way of present application for granting stay of order of conviction and sentence passed by the Additional Sessions Judge, Gr.Bombay dated 6th August, 2005, apprehending further action against the applicant by his employer, by way of departmental proceedings including suspension of service.

4. Learned APP has resisted this application placing reliance on the decision of the Apex Court in the case of **K.C.Sareen V/s. CBI, Chandigarh, reported in 2001 SCC (Cri)1186.** It is contended relying on the exposition in this decision that the power of this court to suspend the order of conviction can be exercised only in exceptional cases and the ground specified in the present application cannot be said to qualify the said situation.

5. Having considered rival submissions and going through the reported decision pressed into service referred to above, there can be no doubt that this court in exercise of appellate jurisdiction has power to suspend the order of conviction in terms of Section 389(1) of the Code. Indeed, such power has to be exercised in exceptional cases. In my view, the apprehension expressed by the applicant that as a

result of his absence from duty on account of remaining in jail after 6th August, 2005 may lead to a situation where the applicant will be proceeded for departmental action including suspending him from service. That is the course of action likely to be adopted against the applicant, irrespective of the fact that prima facie opinion has already been recorded by this court while releasing the applicant on bail in its order dated 9th September, 2005 pointing out the infirmities in the prosecution case. In my opinion, the applicant is entitled for the relief, as prayed in this application of suspension of order of conviction, in the interest of justice. Accordingly, application succeeds in terms of prayer clause (a).

6. The opinion recorded hereinabove may not be construed as an expression of opinion on the departmental proceedings or any other action that may be initiated against the applicant.

7. Ordered accordingly.